

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

2013-1206

EXELA PHARMA SCIENCES, LLC, EXELA PHARMSCI, INC.,
and EXELA HOLDINGS, INC.

Plaintiffs-Appellants,

v.

TERESA STANEK REA, DIRECTOR,
UNITED STATES PATENT AND TRADEMARK OFFICE,

Defendant-Appellee,

and

CADENCE PHARMACEUTICALS, INC.,
and SCR PHARMATOP,

Intervenors.

Appeal from United States District Court for the Eastern District of Virginia
in Case No. 12-CV-0469, Judge Liam O’Grady.

**UNOPPOSED MOTION FOR ENLARGEMENT OF TIME TO FILE
OPENING APPEAL BRIEF**

Pursuant to Federal Circuit Rule 26(b), Plaintiffs-Appellants Exela Pharma Sciences, LLC, Exela PharmSci, Inc., and Exela Holdings, Inc. (collectively “Plaintiffs-Appellants”) hereby move for an enlargement of time to file Plaintiffs-Appellants’ opening appeal brief. The current deadline for filing Plaintiffs-Appellants’ opening brief is set at April 15, 2013.

Plaintiffs-Appellants request an extension of thirty (30) days until May 15, 2013, to file their opening appeal brief. No prior extensions have been sought.

The current motion is unopposed. On Monday, March 18, counsel for Plaintiffs-Appellants contacted Dennis C. Barghaan, counsel for Defendant-Appellant USPTO, concerning the request for an extension. Mr. Barghaan stated that Defendant-Appellant does not oppose request for an enlargement.

Counsel for Plaintiffs-Appellants also contacted counsel for the Intervenor, Cadence Pharmaceuticals, Inc. and SCR Pharmatop. Counsel for the Intervenor indicated that they would not oppose the motion as long as Plaintiffs-Appellants agreed not to oppose an equivalent motion by Intervenor. Plaintiffs-Appellants agree.

In addition, pursuant to Federal Circuit Rule 26(b)(5), the accompanying affidavit demonstrates good cause for extending the deadline for more than fourteen days. (*See* Declaration of Matthew J. Dowd (“Dowd Decl.”)) As indicated therein, Plaintiffs-Appellants and Intervenor are currently involved in a district court litigation concerning the same patent at issue in the present appeal. (*Id.* ¶ 4.) In the district court litigation, the parties are completing expert discovery, including the preparation of expert reports and the conducting of expert depositions. (*Id.*) Further, counsel for

Plaintiffs-Appellants are currently counsel for record in a number of other active cases which have required the devotion of substantial amount of time during the past several weeks. (*Id.* ¶ 5.)

Based on the above, Plaintiffs-Appellants respectfully ask the Court to grant the motion for an enlargement of time to file the opening appeal brief.

Respectfully submitted,

/s/ Matthew J. Dowd

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Dated: April 5, 2013

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CERTIFICATE OF INTEREST

Counsel for the Plaintiffs-Appellants Exela Pharma Sciences, LLC, Exela PharmSci, Inc., and Exela Holdings, Inc. certifies the following:

1. The full name of every party or amicus represented by me is:

Exela Pharma Sciences, LLC; Exela PharmSci, Inc.; Exela Holdings, Inc.

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

Exela Pharma Sciences, LLC; Exela PharmSci, Inc.; Exela Holdings, Inc.

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

Exela Holdings, Inc.; Exela Pharma Sciences, LLC; Exela PharmSci, Inc.

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:

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Anthony H. Son
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Date: April 5, 2013

/s/Matthew J. Dowd
Signature of counsel

Matthew J. Dowd
Printed name of counsel

cc: Counsel of Record

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**DECLARATION OF MATTHEW J. DOWD IN SUPPORT OF
UNOPPOSED MOTION OF PLAINTIFFS-APPELLANTS TO
EXTEND TIME TO FILE OPENING BRIEF**

I, Matthew J. Dowd, hereby declare as follows:

1. I am an attorney in the law firm of Wiley Rein LLP, 1776 K Street,
N.W., Washington, D.C. 20006.

2. I am of counsel for Plaintiffs-Appellants Exela Pharma Sciences, LLC, Exela PharmSci, and Exela Holdings, Inc. in the above-captioned appeal.

3. I am also admitted *pro hac vice* as counsel for Plaintiffs-Appellants in Exela Pharma Sciences, LLC, Exela PharmSci, and Exela Holdings, Inc. in the procedurally distinct, but related district court litigation, before the U.S. District Court for the District of Delaware. *Cadence Pharms. Inc., v. Paddock Labs., Inc.*, No.11-733 (LPS) (D. Del.).

4. In the district court litigation, the parties are completing expert discovery, including the preparation of expert reports and the conducting of expert depositions at various locations throughout the United States. Expert discovery (with the exception of certain issues) is scheduled to be completed by April 5, 2013. Trial is currently scheduled to begin on May 20, 2013.

5. The attorneys representing Plaintiffs-Appellants are also involved in a number of other cases that have consumed a substantial portion of their available time. For example, counsel of record Anthony Son is lead counsel for a pending patent litigation in U.S. District Court for the Western District of Kentucky. *See Transtex Composite, Inc. v. Laydon Composites Ltd.*, No. 3:12-cv-00150-JBC (W.D. Ky.). Claire J. Evans has been counsel in a

number of unrelated appeals and litigation matters. *See, e.g., Sprint, et al v. Zoning Bd. of Adjustment of Paramus, NJ*, No. 09-4940 (D.N.J.). I am counsel of record for several appeals currently pending before this court, including one case for which oral argument was heard on April 5, 2013. *See In re Urquhart*, Appeal No. 202-1691 (Fed. Cir.).

6. Based on the above facts, I believe that good cause exists for seeking an extension of more than 14 days.

7. I declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

/s/ Matthew J. Dowd

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Dated: April 5, 2013

CERTIFICATE OF SERVICE

I hereby certify that, on this 5th day of April 2013, the foregoing was served via ECF on the following counsel for the parties:

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/s/Matthew J. Dowd
Matthew J. Dowd

Dated: April 5, 2013